IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1847 of 2006
with
FIRST APPEAL No. 1848 of 2006
to
FIRST APPEAL No. 1867 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE J.M.PANCHAL

HON'BLE SMT. JUSTICE ABHILASHA KUMARI

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ? NO

2 To be referred to the Reporter or not ? NO

3 Whether their Lordships wish to see the fair copy of the judgment ? NO

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ? NO

5 Whether it is to be circulated to the civil judge ? NO

==========

SPECIAL LAQ OFFICER - Appellant(s)
Versus
RAMABHAI LAXMANBHAI & 1 - Defendant(s)

==========

Appearance :
MS SS PATEL, AGP for Appellant(s)
MR AJ PATEL for Respondent No.1-Claimant(s)
MR AD OZA for Respondent No.2

==========

CORAM : HONOURABLE MR.JUSTICE J.M.PANCHAL
and
HON'BLE SMT. JUSTICE ABHILASHA KUMARI

Date : 26/06/2006

COMMON ORAL JUDGMENT (Per: HON'BLE SMT.JUSTICE ABHILASHA KUMARI)

1. Admitted. Mr.A.J.Patel, learned counsel, waives service of Notice on behalf of the claimants in each Appeal. Mr.A.D.Oza, learned counsel, waives service of Notice on behalf of the Executive Engineer, Narmada Yojna, Division No.3/2, Dhandhuka, in each Appeal. Having regard to the facts of the case, all these Appeals are taken up for final disposal today.

2. All the above numbered Appeals filed under Section 54 of the Land Acquisition Act, 1894 (“the Act” for short), read with Section 96 of the Code of Civil Procedure, 1908, are directed against the common judgment and

award dated November 24, 2003, rendered by the 2nd Extra Assistant Judge and Special Judge (LAR), Ahmedabad (R) at Navrangpura, in Land Acquisition Case Nos.561 of 1999 to 581 of 1999, by which the Reference Court has awarded to the claimants, additional compensation at the rate of Rs.31.60 per sq.mt. over and above the compensation of Rs.0.60/- and Rs.0.90/- per sq.mt. awarded by the Special Land Acquisition Officer for non irrigated and irrigated lands respectively.

3. A proposal was received by the State Government to acquire the agricultural lands of village Nana Tradiya, Taluka: Dhandhuka, District: Ahmedabad, for the public purpose of construction of Narmada Canal. On perusal of the said proposal, the State Government was satisfied that the agricultural lands of village: Nana Tradiya were likely to be needed for the said public purpose. Therefore, Notification under Section 4 of

the Act was issued, which was published in the official gazette on September 6, 1995. Thereafter, the land owners were served with notices under Section 4 of the Act. They filed their objections against the proposed acquisition. After considering their objections, the Special Land Acquisition Officer forwarded his report under Section 5A(2) of the Act to the State Government. On consideration of the said report, the State Government was satisfied that agricultural lands specified in Notification published under Section 4(1) of the Act were required for public purpose of construction of Narmada Canal. Therefore, declaration under Section 6 of the Act was made which was published in the official gazette on August 29, 1996. The interested persons were thereafter served with notices under Section 9 of the Act for determining the amount of compensation payable to them. Having regard to the materials placed before him, the Special Land Acquisition Officer offered

compensation to the claimants at the rate of Rs.0.60/- per sq.mt. and 0.90/- per sq.mt. as referred to above. The claimants were of the opinion that the offer of compensation made by the Special Land Acquisition Officer was highly inadequate, since the claim made by them was for Rs.50/- per sq.mt. Therefore, they submitted written applications requiring the Special Land Acquisition Officer to refer the matter to the Court for determination of just amount of compensation payable to them. Accordingly, references were made to the District court, Ahmedabad (Rural) at Navrangpura, which were numbered as referred to earlier.

4. In support of the claim put forward by the claimants, claimant-Ramabhai Laxmanbhai was examined and his deposition is at Ex.40. Over and above stating that the lands acquired were highly fertile and that each claimant was earning net profit of

Rs.30,000/- per Vigha per year from the sale of the agricultural produces, the said witness produced and relied upon the award of the Reference Court regarding village Sarvar which was adjoining to village Nana Tradiya, whereby, the Reference Court had awarded additional compensation at the rate of Rs.24.40/- per sq.mt. On behalf of the acquiring body, Narendrabhai Narandas Bhavsar was examined at Ex.48. Documentary evidence, such as the judgment in Land Acquisition Reference No.2448/1996 pertaining to the lands of village Sarvar was also produced by the claimants at Ex.39.

5. On appreciation of the evidence adduced by the parties, the Reference Court was of the opinion that the previous award at Ex.39 produced by the claimants furnished good guidance for the determination of the market value of the lands acquired in the instant case, since village Sarvar, to which Ex.39 pertains, was adjoining to village Nana

Tradiya. After placing reliance on the said award, the Reference Court held that the claimants were entitled to additional compensation at the rate of Rs.31.60/- per sq.mt. for the acquired lands, by judgment and award dated November 24, 2003, giving rise to the instant Appeals.

6. This Court has heard Mr.Sudhanshu S.Patel, learned Assistant Government Pleader, as well as Mr.A.J.Patel, learned counsel for the claimants and Mr.A.D.Oza, learned counsel for the acquiring body at length and in great detail. This Court has also considered the evidence forming part of record of the Reference Court.

7. In order to arrive at a just conclusion whether the Reference Court has fairly determined the compensation, it would be relevant, at this point, to refer to the depositions of the witnesses examined by both the parties. On behalf of the

claimants, Ramabhai Laxmanbhai, who is also one of the claimants, has given his deposition at Ex.40. He has stated that he is the claimant in Land Acquisition Case No.561 of 1999 which related to Survey No.29 and his land admeasuring 6165 sq.mts. was acquired for the construction of Narmada canal alongwith the lands of other claimants which were also acquired for the same purpose. He has further stated that all the acquired lands were equally fertile and had irrigation facilities such as wells and bore-wells and that the farmers of Nana Tradiya were cultivating two to three different crops in a year and were thereby earning net agricultural income of Rs.30,000/- per Vigha per year. He has also produced statements of sale instances of agricultural produces at Ex.45. This witness has stated that village Nana Tradiya is a developed one, having a population of about 3000 to 4000 persons and there are adequate facilities such as water, light, pucca

roads, cooperative society, bank, post office, primary school, health center, milk society, etc. According to this witness, village Nana Tradiya is one of the developed villages of Dhandhuka Taluka. It is stated by this witness that lands of adjoining village Sarvar were also acquired earlier for the purpose of construction of Narmada canal and the claimants in that case, whose lands were so acquired, had preferred References before the Reference Court, which awarded additional compensation of Rs.25.00/- per sq.mt. He has stated that no Appeal had been preferred by the opponents against the said award.

However, Mr.A.J.Patel, learned counsel for the claimants, has clarified that although this was the position at the point of time when the deposition of the witness was recorded, but subsequently, Appeals being First Appeal Nos.2384 to 2389 of 2005 were preferred in the High Court and by judgment

dated August 26, 2005, the High Court had reduced the compensation payable to the claimants in that case from Rs.25.00/- per sq.mt. to Rs.17.10/- per sq.mt. A photocopy of this judgment has been produced for our perusal and has been taken on record.

The witness Ramabhai Laxmanbhai has also deposed that village Sarvar is situated at a distance of 1.5 km. from Nana Tradiya, and that village Nana Tradiya is situated quite near to the road. According to this witness, the claimants were resorting to scientific means of agriculture and cultivation and were selling their crops in the Dhandhuka Market Yard situated nearby.

This witness was cross-examined by the learned counsel for the acquiring body. In the cross-examination, this witness has admitted that he does not have any documentary evidence to establish the fact that the claimants were purchasing

fertilizers, seeds and pesticides from the Cooperative society and were selling their crops in the Dhandhuka Market Yard. However, he has denied that there is no irrigation facility in the acquired lands and that Dhandhuka is situated at a distance of 50 kms. from their village. This witness has also admitted that they were not keeping any accounts, but has denied the suggestion that the acquired lands were unirrigated or unfit for agriculture. Apart from the above, nothing fruitful has been elicited by the learned counsel for the acquiring body from this witness.

8. The acquiring body has examined Narendrabhai Narandas Bhavsar whose deposition is at Ex.48. This witness has stated that he remained as Deputy Executive Engineer and has seen the agricultural lands of village Nana Tradiya, which are non irrigated and uneven. According to him, Dhandhuka is situated at a distance of 22 kms. away from

Nana Tradiya. He further stated that there is no development in village Nana Tradiya and that no facilities are available for agricultural purposes. According to him, village Sarvar is situated 8 to 10 kms. away from Nana Tradiya and there is a distance of 6 kms. between the survey numbers of both the villages.

In the cross-examination by the learned counsel for the claimants, this witness has admitted that he was not holding the present post at the time of the said acquisition and he was not able to say anything about the acquired lands and that he was deposing regarding the acquired lands of village Nana Tradiya on the basis of the record, as he had no personal knowledge regarding the same. He also admitted that he does not have any proof to establish that the lands of village Sarvar were more fertile than the acquired lands of village Nana Tradiya.

9. On the appreciation of the oral and documentary evidence adduced by the parties, the Reference Court was of the opinion that the previous award pertaining to the lands of village Sarvar produced by the claimant at Ex.39, furnished good guidance for determination of the market value of the lands acquired in the instant case from village Nana Tradiya. After placing reliance upon the said award, the Reference Court, by its judgment dated November 24, 2003, held that the claimants were entitled to additional compensation at the rate of Rs.31.60 per sq.mt. for their acquired lands.

10. In this background, this Court has re-evaluated the entire material on record in order to arrive at a just conclusion. From the testimony of the witnesses examined on behalf of the claimants and the acquiring body, it is evident that the lands of village Nana Tradiya are adjoining to the

lands of village Sarvar. Ex.39 is the award of the Reference Court rendered in Land Acquisition Case No.2448 of 1996 (main). It indicates that various survey numbers of village Sarvar were acquired pursuant to the publication of Notification under Section 4(1) of the Act in the official gazette on August 17, 1992, for the public purpose of construction of Narmada canal. The Reference Court, in that case, had passed the award after considering the evidence on record and had fixed the market value of the lands at Rs.25/- per sq.mt. However, as observed earlier, vide judgment of the High Court dated August 26, 2005, in First Appeal No.2384 of 2005 and connected Appeals, this award came to be modified, and the compensation was fixed at Rs.17.10/- per sq.mt. From the deposition of Ramabhai Laxmanbhai, it is clear that the lands of village Sarvar and the lands of village Nana Tradiya, which are the subject matter of the present acquisition, were similar in all

respects and were adjoining to each other. They possessed similar advantages and fertility and this aspect of the matter has not been shaken by the learned counsel for the acquiring body in cross-examination of the witness examined by the claimants. It is also evident from his testimony that the development and facilities in the two places are also similar.

11. The Reference Court has therefore rightly relied upon the previous award pertaining to the lands of village Sarvar. It is a settled principle of law that the previous award of comparable lands can be relied upon in order to fix the basis for arriving at the just and reasonable market value of the lands which are adjoining to each other. In the present Appeals, although the claimant has deposed regarding the fertility of the acquired land and the crops grown upon it, the Reference court has not determined the compensation on the basis of yield of

agricultural produce or sale of crops, since no concrete evidence regarding these factors has been produced. In these circumstances, the judgment pertaining to adjoining and comparable lands, which has attained finality, can safely be relied upon, as has been done by the Reference Court.

12. The award of the Reference Court in respect to the acquired lands of village Sarvar (Ex.39) has been modified by the High Court vide judgment dated August 26, 2005, and compensation of Rs.17.10/- has been considered to be just compensation. In the present case as well, the modified award can be made the basis for fixing the market value of the acquired lands of village Nana Tradiya, and for determining the amount of just compensation payable to the claimants.

13. Accordingly, the impugned award of the Reference Court will have to be modified,

taking into consideration the market value fixed by the High Court at the rate of Rs.17.10/- per sq.mt. in respect of the acquired lands of village Sarvar and the same amount shall have to be awarded in the present case as additional compensation. It is therefore held that the claimants are entitled to total amount of compensation at the rate of Rs.22.25/- per sq.mt. for non irrigated lands and Rs.22.50/- per sq.mt. for irrigated lands of village Nana Tradiya which have been acquired.

14. For the foregoing reasons, all the Appeals are partly allowed. It is held that the claimants are entitled to total compensation at the rate of Rs.22.25/- per sq.mt. for non-irrigated lands and Rs.22.50/- for irrigated lands. The rest of the award does not require to be interfered with by this Court and is hereby confirmed. It is therefore ordered accordingly. There shall be no order as to costs. The Registry is

directed to draw up the decree in terms of this Judgment, at the earliest.

(J.M.Panchal, J.)

(Smt.Abhilasha Kumari, J.)

(sunil)